

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 459/2012 and C.M. No. 969/2012 (for stay)

ZOOM ENTERTAINMENT NETWORK LIMITED Petitioner

Through: Mr. K. Datta and Mr.Atul Singh,

Advs.

versus

CENTRAL INFORMATION COMMISSION and ORS

Respondents

Through: Mr. Neeraj Chaudhari, CGSC with

Mr. Akshay Chandra and Mr.Ravjyot

Singh, Advs. for UOI.

Mr.Sanjiv K. Jha, respondent no.1 in person.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

O R D E R

08.05.2012

The petitioner has preferred the present writ petition under Article 226 of the Constitution of India to assail the order dated 29.12.2011 passed by the Central Information Commission in complaint No. CIC/SG/C/2011/000846, whereby the learned CIC has allowed the aforesaid complaint/appeal preferred by respondent no.1 and directed the disclosure of information sought by respondent no.1. The queries were made under three different categories i.e., (A), (B) and (C). While the queries under category (A) and (B) were of general nature and pertained to the operating TV channels, and applications pending in the Ministry of Information and Broadcasting of those who are seeking permission for uplinking and downlinking, the queries under category (C) pertained specifically to the petitioner. The respondent-querist had sought, in relation to the petitioner ?photocopies of all the pages of file/files along with all documents, correspondence etc. and file noting of the Television channel named as "MOVIES NOW" Telecasting movies.? The querist had also sought information with regard to the ?date on which the application for permission to telecast was received from "MOVIES NOW" and the date on which the permission was granted?.

The submission of learned counsel for the petitioner Mr. K. Datta is that a perusal of the impugned order would show that the same is

wholly unreasoned. The CIC has mechanically directed the provision of the information sought by the applicant under all the three categories without even examining whether the same would breach the confidentiality or trade secrets of the entities to whom the information related under Section 8(1)(d) of the RTI Act, even though the PIO had denied the application made by the querist by placing reliance on Section 8(1)(d) of the Act.

The petitioner has set out in paragraphs 9 and 10 of the writ petition the nature of the information contained in the respondent's file pertaining to the petitioner's application to seek permission for uplinking/downlinking and, according to the petitioner, the information contained in the said file is of the following nature:

9. It is submitted that while making an application for grant of a license to operate a television channel, the Petitioner was required to provide intimate and extremely sensitive personal data pertaining to its Directors, including their PAN card number, passport details, residential addresses, personal telephone number, educational qualifications etc. The entire file pertaining to any Television channel with the Respondent No.3 contains several details and confidential personal information about directors of the company applying for permission to telecast.

10. Furthermore, the Petitioner had also disclosed its net worth, share

holding pattern, cross-holding details, balance sheets, and profit and loss accounts of closely held companies. All the information submitted to Respondent No. 3 by Petitioner is in the nature of commercial confidence and trade secrets, being financial data, profit and loss statements, balance sheet, annual plans, business plans, distribution network, satellite contracts, shareholding pattern of Petitioner Company as well

its holding Company, BCCL. The information by its very nature is such that it is bound to give an edge to the competitors of Petitioner and harm its competitive position in an extremely competitive media industry.

It is pertinent to note that the Petitioner and its holding Company, BCCL are unlisted Companies and the details of its shareholding pattern or net worth is not in public domain and therefore is even more confidential and sensitive.?

The further submission of Mr. Datta is that the CIC did not even adhere to the procedure prescribed in Section 11 of the Act, even though the information pertained to a third party i.e., the petitioner. Before issuing direction to grant information to the querist, notice ought to have been issued to the petitioner and consent/objections invited from the petitioner, which was not done. Mr. Datta submits that the impugned order being in gross violation of principles of natural justice is null

and void.

On 20.01.2012 when the writ petition was entertained for the first time and notice was issued, it was directed that respondent no.2 (who has been renumbered as respondent no.1 upon deletion of CIC as a party respondent) shall not part with the information, or exploit the information sought by him and provided to him in response to query (C), in so far as it pertains to the financial transactions, shareholding pattern, distribution network, satellite plan of the petitioner.

Respondent no.1 who appears in person has submitted that he does not wish to file a counter affidavit and, therefore, he has argued the matter by making oral submissions. He submits that the reasoning adopted by the CIC can be found in its order at running Page 21 of the record. He submits that the CIC has observed that the said information is liable to be disclosed under Section 4 of the Act by the concerned department.

I have perused the impugned order and heard learned counsels for the parties. I am of the view that the impugned order cannot be sustained, and is liable to be set aside as it has been passed without recording any reasons whatsoever, and is clearly in breach of the petitioner's rights under Section 11 of the Act. The impugned order having been passed in breach of the principles of natural justice, is null and void.

A perusal of the impugned order shows that no reasons whatsoever have been recorded while directing disclosure of the information sought by the querist. The defence of the PIO that the information could not be provided as it could be hit by Section 8(i)(d) has not been addressed at all. Even though information sought in category 'C' queries was specifically in relation to the petitioner, the petitioner was not noticed.

The argument of the querist, that the reasoning adopted by the CIC is that the information should be made available by the public authority suo moto under Section 4 of the Act is not correct. A perusal of the relevant paragraph of the impugned order shows that the CIC has merely recorded the submission of the querist founded upon Section 4 of the Act.

There is no finding returned by the CIC, based on any discussion, that the information sought by the querist indeed is liable to be disclosable under Section 4 of the Act.

In any event, since the information sought by the respondent querist pertained, inter alia, to the petitioner specifically, the petitioner ought to have been noticed under Section 11 of the Act.

Accordingly, the impugned order is set aside and the matter is remanded back to the CIC to reconsider the matter and pass a fresh reasoned order after granting hearing to the petitioner. Consequently, the respondent querist is directed to return the entire information received by him in terms of the impugned order of the CIC to the PIO of respondent no.3 without retaining any copy thereof.

The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J